

IN THE HIGH COURT OF CHHATTISGARH AT BILASPURWRIT PETITION NO. 4470 OF 2004PETITIONER

P.R. No. 4568/04  
Presented by Shri. A.K. Aggar  
dated 23/11/04

Smt. Pramila Gupta Aged About-  
56 years, Wife of Dr.D.K.Gupta  
Occupation-PostGraduate  
Teacher (Hindi), Mixed Higher  
Secondary School (English  
Medium) Bilaspur (C.G.) R/o-  
R/3-14/602,VinobaNagar  
Bilaspur (C.G.)

VERSUSRESPONDENT (S)

1. Union Of India  
Through General Manager  
South Eastern Railway,  
Garden Reach,  
Kolkata (W.B.)
2. Chief Personnel Officer  
South Eastern Railway,  
Garden Reach,  
Kolkata (W.B.)
3. Divisional Railway Manager  
South Eastern Railway,  
Bilaspur Division, Bilaspur (C.G.)
4. Sr.Divisional Personnel Officer  
South Eastern Railway,  
Bilaspur Division, Bilaspur (C.G.)
5. R.P.Pandey, S/o-Shri S.N. Pandey  
Trained Graduate Teacher, South  
Eastern Railway, Mixed Higher  
Secondary School (English  
Medium) Bilaspur (C.G.)



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WRIT PETITION UNDER ARTICLE 226/227 OF THE  
CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE  
WRIT IN THE NATURE OF MANDAMUS / CERTIORARI ETC. OR  
DIRECTION / ORDER IN THE LIKE NATURE.

AFR  
(2)

**HIGH COURT OF CHHATTISGARH AT BILASPUR**  
(Division Bench)

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Coram : Hon'ble Shri A.K. Patnaik, C.J.  
Hon'ble Shri Satish K. Agnihotri, J.

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**Writ Petition No.4470 of 2004**

Smt. Pramila Gupta

Versus

Union of India & Others

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Present : Mr. Vinay Pandey, learned counsel for the petitioner.  
Mr. Vinay Harit, Sr. Advocate with Mr. B.K. Chakraborty, learned counsel for respondents 1 to 4.  
Mr. R.M. Mukhopadhyay, learned counsel for respondent No.5.

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**ORDER**

(Passed on 21<sup>st</sup> July, 2005)

The following order of the Court was passed by A.K. Patnaik, C.J.

This is a petition under Article 226 / 227 of the Constitution of India challenging the order dated 13.10.2004 (Annexure P-1) of the Central Administrative Tribunal, Jabalpur Bench, Jabalpur in Original Application No.477 of 2002.

2. The facts briefly are that respondent No.5 herein was initially appointed as a Primary School Teacher and thereafter promoted to the post of Trained Graduate Teacher (for short 'TGT') on ad hoc basis and

posted at Mixed Higher Secondary School (for short 'MHSS') (Hindi Medium) at Bilaspur. He was regularized in the post of TGT and was posted at Bilaspur by order dated 15.06.1993. While he was working as TGT, he was empanelled for promotion to the post of Post Graduate Teacher (for short 'PGT') (Hindi) and was posted at MHSS, Khurda Road by order dated 30.06.1993. The respondent No.5, however, did not join at the promoted post at MHSS, Khurda Road and preferred to continue at Bilaspur as TGT. While he was continuing as TGT at Bilaspur, a vacancy arose in the post of PGT at Bilaspur w.e.f. 31.12.1998 on the retirement of one Smt. S.C. Prakash. In the said vacancy, the petitioner who was empanelled for PGT on 06.02.1997 and was appointed against a post of Hindi Medium, School at Bhilai was posted in the said vacancy in the post of PGT at Bilaspur meant for English Medium School. Respondent No.5 then made a representation dated 24.05.1999 to the Chief Personnel Officer, South Eastern Railway, Garden Reach complaining that overlooking his claim for the post of Hindi PGT in English Medium Higher Secondary School at Bilaspur, the petitioner from Hindi Medium School has been promoted as PGT (Hindi) in English Medium Higher Secondary School at Bilaspur, ignoring the fact that seniority and promotions for Hindi medium and English medium school have been maintained and done separately, medium-wise. There was no reply to said representation of the respondent No.5. Thereafter, he submitted a second representation dated 21.12.2000 to the same effect. There was no reply to the second representation. Thereafter, he sent a notice dated 08.12.2001 reiterating the aforesaid grievance through his Advocate. A reply dated 25.02.2002 was received from the Chief Personnel Officer, South Eastern Railway to the counsel for the respondent No.5. The petitioner submitted yet another representation to the Chief Personnel Officer, South Eastern Railway,

requesting him to re-examine the matter but when no reply was received by respondent No.5, O.A.No.477 of 2002 was filed by respondent No.5 before the Central Administrative Tribunal, Jabalpur on 20.05.2002. The Tribunal considered the case of respondent No.5, the petitioner as well as the Railways and passed the impugned order dated 13.10.2004 allowing the O.A. in part and quashing the appointment of the petitioner as PGT (Hindi) in English Medium School and directing the Railways to fill up the vacancy as per the rules. Aggrieved, the petitioner filed the present writ petition and on 17.01.2005, the Court called for the records of the Tribunal in the aforesaid O.A. and on 03.02.2005 stayed the effect and operation of the impugned order till the hearing of the writ petition on the next date.

3. When the case was taken up for hearing today, Mr. Vinay Pandey, learned counsel for the petitioner submitted that although the petitioner had specifically pleaded in her reply filed before the Tribunal in the O.A. that the O.A. was barred by time, the Tribunal has not considered the said plea of the petitioner. He vehemently submitted that it will be clear from the provisions of Section 21 (1)(a) of the Administrative Tribunal Act, 1985 (hereinafter referred to as "the Act") that an application for redressal of grievance has to be filed before the Tribunal within one year from the date on which the final order is passed by the concerned authority and it will be further clear from the provisions of Section 21(1)(b) of the said Act that where a representation has been made and a period of six months had expired thereafter without a final order having been made, the application for redressal of grievance has to be filed before the Tribunal within one year from the date of expiry of the date of six months. He submitted that in this case, the petitioner was promoted as PGT on 06.2.1997 and thereafter was transferred and posted as PGT in the English Medium School, Bilaspur on 21.04.1999 but the O.A. was filed by the respondent

No.5 before the Tribunal on 23.05.2002 much after the limitation period prescribed under Sections 21(1)(a) and 21(1)(b) of the aforesaid Act. He further submitted that in this case, the respondent No.5 did not file any application for condonation of delay before the Tribunal and the Supreme Court has held in **Ramesh Chand Sharma vs. Udham Singh Kamal & Others** reported in **AIR 1999 SC 3837** that where a petition challenging promotion given to the respondent is filed after the expiry of the limitation period and no application for condonation of delay is made, the Tribunal could not have entertained the application against the promotion order.

4. Mr. R.M. Mukhopadhyay, learned counsel for respondent No.5, on the other hand, submitted that it will be clear from the Annexures A-3, A-5, A-7 and A-8 that respondent No.5, filed representations before the competent authority on 24.05.1999 and 21.12.2000 and sent a legal notice to the competent authority on 08.12.2001 and reply to the legal notice was sent on 25.02.2002 by the competent authority. He submitted that the final order in this case rejecting the claim of respondent No.5 for promotion was passed on 25.02.2002 and the O.A. was filed by respondent No.5 before the Tribunal on 25.03.2002, which is within the period of limitation prescribed under Section 21(1)(a) of the Act. He further submitted that in this case, the grievance of respondent No.5 was not so much against the promotion of the petitioner to the post of PGT but her posting as PGT in the English Medium School at Bilaspur as she belongs to the stream of the Hindi Medium School and could be posted as PGT in a vacancy arising in the stream of English Medium School. Mr. Mukhopadhyay submitted that non-consideration of the claim of respondent No.5 for such promotion to a post of PGT which had fallen vacant in English Medium School at Bilaspur was the cause of action for respondent No.5 for moving the Tribunal and such cause of action was a

continuous cause of action as it continued till the petitioner continued in a post of PGT in English Medium School at Bilaspur. In support of this submission, he cited the decision of the Supreme Court in **M.R. Gupta vs. Union of India & Others** reported in **AIR 1996 SC 669**.

5. Mr. Vinay Harit, Sr. Advocate with Mr. B.K. Chakrabarty, learned counsel for the Railways, very fairly submitted that it will be clear from the communication dated 14.09.2004 of the Senior Personnel Officer (W), from the Office of the Chief Personnel Officer, Garden Reach, Kolkata to the Deputy Chief Personnel Officer (Cadre), South East Central Railway, Bilaspur, placed in the records of the Tribunal that the transfer of the petitioner from MHSS (Hindi Medium) Bilaspur to MHSS (English Medium) Bilaspur to teach Hindi in English Medium School was purely a temporary arrangement to accommodate the petitioner at Bilaspur where her spouse was posted and was made because no PGT on panel for the English Medium School was available at the material time, but she still belongs to Hindi Medium seniority list which is evident from the seniority list dated 01.07.2000 published before the trifurcation of the South Eastern Railway.

6. Paras 6 and 7 of the impugned order dated 13.10.2002 of the Tribunal in O.A. No.477 of 2002 which contain the reasons for the order and relief granted by the order in favour of respondent No.5 are quoted herein below:

"6. In spite of our specific direction issued on 10.9.04, the respondents have not produced the proceedings of the selection committee, in which the private respondent no.5 was selected. However, on the basis of available records we find that Smt. Pramila Gupta was considered for a post of PGT Hindi against the vacancy arose in Hindi Medium School. We have also seen the circular submitted by the learned counsel for the respondents which stipulates that it

is not permissible to consider a person for promotion / selection for a particular post from different cadre. The seniority of Hindi Medium School Teachers and English Medium School are maintained separately and it is not possible to consider a Teacher of Hindi Medium School for promotion to the post of PGT in an English Medium School and vice versa. In this case, we find that private-respondent no.5 has been selected against the post of Hindi Medium School at Bhilai and she could, therefore, not be considered to the post of PGT Hindi against a vacancy which arose on 31.12.1998 on retirement of Smt. S.C. Prakash in the English Medium School. The vacancy which arose on 31.12.1998 was required to be notified and its selection was required to be made against that post as per rules which has not been done by the respondents and instead a person selected for a post of PGT (Hindi) in Hindi Medium School, has been appointed against the said vacancy which is not permissible under the rules and is also against the rules/instructions issued by the respondents. The respondents have quoted the rules of selection in their circular dated 8.11.2000(Annexure-A-4), which are reproduced below-

'The teachers who fulfill the requisite qualification will be called upto 3 times of the number of vacancies to be empanelled. Normally for a vacancy in the particular mediumwise seniority group, only those teachers who are borne in that medium-wise seniority group are eligible. In case the required number can be found from the applicants immediately in lower grade then the teacher from grades further below will not be called and no representations will be entertained. If requisite number of teachers are not found in the next lower grade, application from teachers in two grades below the selection grade, Rs.6500-10500 will be considered to make up three times of the number required to be called for the above selection. In case sufficient optees are not found in the next lower grade as well as in two grades below, to make up three times of the number to be empanelled teachers who may opt to the other medium would be eligible subject to their capacity to teach in the particular medium. They will be placed below to those teachers of the same medium in the seniority group. The teachers of the other medium

will be called in order to their integrated seniority deciding on the length of non-fortutious service in the grade.

The above rule specifically provides that normally for a vacancy in a particular mediumwise seniority group, only those teachers who are borne in that mediumwise seniority group are eligible. In the instant case the applicant was a teacher in the English Medium School and the vacancy had occurred in that school. Therefore, the said vacancy should not have been filled up by appointing respondent no.5 who was selected for a post in Bhilai in Hindi Medium School. Therefore, the appointment of respondent No.5 is legally not sustainable in the eye of law as the same has not been made in accordance with the rules, instructions and law and the same is liable to be dismissed. Apart from it, private-respondent was empanelled for promotion to the post of PGT vide order dated 6.2.1997 and was debarred for promotion for a period of one year i.e. up to 5.2.1998 as she did not carry out the promotion/transfer order. The vacancy at Bilaspur arose on 31.12.1998 only on retirement of Smt. S.C. Prakash. It is not explained by the respondents as to whether she was further debarred for promotion from 6.2.1998 onwards also as she did not join her duties at Bhilai. From the records (Annexure-A-2) we find that she continued to work as TGT at Bilaspur from 6.2.1998 onwards and was promoted as PGT and transferred to MHSS (English Medium), Bilaspur. She could not have been appointed to the post of PGT against a vacancy which arose almost two years after she was selected for a post of PGT for a Hindi Medium school. Moreover, the orders for her appointment as PGT in English Medium School against a vacancy of 31.12.1998 were issued in April, 1999 i.e. after the life of the panel dated 6.2.1997 was over.

7. In the result, for the reasons recorded above, the O.A. is partly allowed. The appointment of respondent no.5 as PGT (Hindi) in English Medium School is quashed and set aside. The respondents are directed to fill up the said

vacancy as per rules. The respondents are further directed to comply with above directions within a period of four months from the date of communication of this order. No costs."

7. It will be clear from para 6 of the impugned order quoted above that the grievance of respondent No.5 before the Tribunal was that he was a teacher in the English Medium School at Bilaspur and a vacancy had occurred at that School in PGT Hindi on 31.12.1998 on retirement of Smt. S.C. Prakash and the said vacancy could only be filled up by promotion from amongst eligible TGT in English Medium School on the basis of seniority and other promotion criteria, but respondent No.5 was not considered for the said vacancy and instead the petitioner who had been empanelled for promotion for PGT (Hindi) in Hindi Medium School was transferred and posted in the said vacancy in which post of PGT (Hindi) in the English Medium School which arose on 31.12.1998. So long as the petitioner was not removed from the said post of PGT (Hindi) in English Medium School, respondent No.5 obviously could not be considered for promotion to the said vacant post of PGT (Hindi) in English Medium School. The cause of action of respondent No.5 was therefore a continuous one and could not possibly have ended on the posting of the petitioner as PGT (Hindi) in an English Medium School on 21.04.1999. In **M.R. Gupta vs. Union of India & Others** (supra) cited by Mr. Mukhopadhyay, the Supreme Court referred to the decision of the Federal Court in **Thota China Subba Rao and Others vs. Mattapalli Raju and Others** reported in **AIR (37) 1950 FC 1** in which it was held that a right of redemption is an incident of a subsisting mortgage and it subsists so long as the mortgage itself subsists unless the equity of redemption is so extinguished and has held that the right of a government servant similarly to be paid the correct salary throughout his tenure according to

computation made in accordance with the rules subsists so long as he is not paid according to rules. In the present case the admitted position is that the petitioner belongs to MHSS (Hindi Medium) and had been empanelled for promotion to the post of PGT in Hindi Medium and could not be posted in a vacant post of PGT English Medium and her posting was purely on temporary arrangement to accommodate her at Bilaspur where her spouse was also posted and was done because no PGT on panel in MHSS (English Medium) was available at the material time. If that be so, then the petitioner could only continue in the said post of PGT in the English Medium School at Bilaspur till a panel for PGT in MHSS (English Medium) was constituted in accordance with the rules for regular appointment to the said vacancy and respondent No.5 was entitled to be considered for inclusion in such panel for PGT in accordance with the rules. Hence, the right of respondent No.5 to be considered in accordance with the rules for empanelment as PGT for the said vacancy in MHSS (English Medium) at Bilaspur subsisted and continued even after the posting of the petitioner as PGT (Hindi) in English Medium School on 21.04.1999.

8. Mr. Vinay Pandey, learned counsel for the petitioner, next submitted that it will be clear from the circular dated 08.11.2000 quoted in the impugned order dated 13.10.2004 of the Tribunal that in case optees are not found in the lower grade as well as in two grades below in the mediumwise seniority group to make three times the number to be empanelled for PGT, teachers who may opt from the other medium would be eligible subject to their capacity to teach in the particular medium. He submitted that respondent No.5 was not eligible and other optees were not found in next lower grade as well as in two grades below to make three times of the number to be empanelled as PGT in English Medium School

and hence, the petitioner was eligible to be empanelled and promoted as PGT in English Medium School, although she belonged to Hindi Medium School.

9. We are unable to accept the aforesaid submission of Mr. Pandey. It is not in dispute that respondent No.5 was in fact was empanelled for PGT (Hindi) and was posted at MHSS, Khurda Road by order dated 30.06.1993 but the said promotion was not availed by respondent No.5. If the respondent No.5 was not eligible for empanelment, he could not have been earlier empanelled for the post of PGT (Hindi). Mr. Vinay Harit, learned counsel for the Railways does not dispute the position that respondent No.5 was eligible to be considered for empanelment for PGT (English Medium) at the relevant time.

10. For the aforesaid reasons we are not inclined to interfere with the impugned order passed by the Tribunal. By the impugned order, however, what has been quashed is not the empanelment and promotion of the petitioner as PGT (Hindi) in Hindi Medium School but her posting as PGT (Hindi) in English Medium in the vacancy which arose on 31.12.1998 in the post of PGT in the English Medium School at Bilaspur. Thus, for the said vacancy, the Railways will have to consider the eligible candidates in accordance with the rules but this will not debar the Railways from posting the petitioner as PGT (Hindi) in Hindi Medium School in any vacancy that may be available in Hindi Medium School. By the impugned order, the Tribunal has also not directed that the petitioner will not be given the salary and other emoluments during the period she worked as PGT (Hindi) in English Medium School at Bilaspur. Further, considering the order of stay passed by this Court, which continued to operate till today, she would be paid salary and allowances, if she was otherwise entitled for such

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payment in accordance with the rules. The interim order passed by this Court on 03.02.2005 is vacated. The Railways will take immediate steps to fill up the said vacancy. It will be open for the Railways to make temporary arrangement for teaching of Hindi at the English Medium School, Bilaspur till such appointment is made.

With the aforesaid directions, the writ petition is disposed of.

Sd/-  
Chief Justice

Sd/-  
Satish K. Agnihotri  
Judge

Sarma